IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 865 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN W/OCHIMANLAL M Darji & two Others
... Appellants
(Original accused nos.2,3&4)

Versus

STATE OF GUJARAT... Respondent

Appearance:
1. Criminal Appeal No. 865 of 1990
Mrs. Banna Dutta for Mr. KB PUJARA &
MS KRISHNA U MISHRA for the Petitioners No. 1-3
Mr.K.G.Sheth, Addl.PUBLIC PROSECUTOR for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 24/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellants, who are the original accused nos. 2, 3 & 4 seek to challenge the judgment and order dated 9th August,1990 of the Learned Additional Sessions Judge, Nadiad in Sessions Case no. 164 of 1989 by which the accused nos. 2 & 3 were convicted for the offence under Sec. 302 read with Sec. 114 of the Indian Penal Code and sentenced to imprisonment for life and all the accused nos. 1 to 4 were convicted for the offences under Sec. 304-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years and also convicted for the offence under Sec. 498-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of two years. The accused no. 1 was further convicted for the offence under Sec. 325 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo further rigorous imprisonment for three months. The accused no. 1, who was the husband of the victim Minakshiben, has not preferred any appeal.

2. The prosecution version was that on 4th March, 1989 in the afternoon around 3 o' clock, the original accused no. 1 Sureshbhai Chimanbhai started a quarrel with his wife Minakshiben for not bringing a gold chain and a gold ring in dowry and this was picked up by his mother Maniben who is the accused no. 2 and Chelaji Sendhaji, the accused no. 3 who was the husband of the sister of accused no. 4 Chimanbhai and residing with that family. The original accused no. 1 Sureshbhai took out his belt and hit Minakshi. He then took a "dhoka" (club) and gave a blow on her left hand which resulted in a fracture. Chelaji and Maniben dragged her upstairs in a room in which there is also a kitchen. She was gagged and they doused her in kerosene and she was set on fire. In the process, her husband's younger sisters Vimlaben and Ramilaben had also joined. These two were juvenile offenders and it appears that they were separately proceeded against before the Juvenile Court. No one is able to tell us as to what happened in those proceedings. According to the prosecution, a month and a half prior to the incident, the demand of gold items was being made and when she had gone to her parents. She had spoken about it to them and about the harassment which was being meted out to her by her in-laws. She wrote a postcard exh. 27 dated 2nd March, 1989 to Dilipkumar who was her sister's husband residing at Lambha and in that postcard she had

complained about the harassment and the apprehended danger to her life requesting the addressee to look after her children, if anything untoward happened to her. According to the prosecution, on 3rd March, 1989 when she was harassed by the members of the family, she went to the house of Nagindas at Odhav. Nagindas was the uncle of the original accused no. 1 Sureshbhai. Nagindas had called her father Shivabhai. Her father-in-law Chimanbhai, original accused no. 4 was also there. She stated before all of them that she was being harassed by her husband, mother-in-law, Chelaji and her sisters-in-law. When her father-in-law Chimanlal and his brother Nagindas assured them that no harm will be caused to her, she was taken by Miraben, wife of Nagindas, to Nadiad. The incident occurred on 4th March, 1989 in the afternoon i.e. soon after she was brought back to her in-laws house at Nadiad. According to the prosecution, she was carried to the Civil Hospital at Nadiad where wrong declaration about accidental burns was made by her husband Sureshbhai and his father's sister's husband Chelaji (described as "fua sasra"). Minakshiben was running fourth month of her pregnancy. She was already having a son and a daughter. According to the prosecution, she did not disclose the true incident at Nadiad in her police statement and in her statement recorded by the Executive Magistrate on 4.3.1989 as she was given threats. After her father and brother-in-law came to Nadiad on receiving information about the burns and when they asked her as to what had happened, she told them that she would disclose it later, after she was removed from Nadiad. She was directed by the Civil Surgeon to be taken to Ahmedabad and was brought to the V.S.Hospital. On her way, she disclosed to the inmates of the ambulance that she was beaten up by her husband with a belt and a "dhoka" and was set on fire by her mother-in-law Maniben and Chelaji (fua sasra) and her sisters-in-law. After they reached the V.S.Hospital at Ahmedabad on 5th March, 1989 and she was admitted in that hospital, she had also disclosed this fact to her father. Her father, therefore, proceeded to Nadiad to lodge an FIR. Her dying declaration was recorded on 6th March, 1989. Her police statement, which also unfortunately became the dying declaration, was recorded on 6th March, 1989. Minakshiben died on 8th March, 1989.

3. The learned trial Judge, on the basis of the evidence on record, came to a finding that it was established that on 4th March, 1989, the accused nos. 2 & 3, with a view to cause her death had dragged Minakshiben to the first floor and the accused no. 2 had poured kerosene on her while the accused no. 3 had held

her and had gagged her and the juvenile offender Vimlaben had brought a matchbox and the other juvenile offender Ramilaben had lighted the matchstick and Minakshiben was set on fire which ultimately resulted in her death and thereby the accused nos. 2 & 3 had intentionally caused her death. It was further held that the prosecution had proved that all the accused persons had demanded that she should get a gold chain and a gold ring from her father and since that demand was not satisfied, they were causing physical and mental harassment to Minakshiben. It was also held that the death of Minakshiben was a "dowry death", which had occurred within seven years of her marriage by burns, otherwise than under normal circumstances. It was also held that the accused no. 1 had voluntarily caused grievous hurt to Minakshiben by causing fracture on her left hand while inflicting a blow with a "dhoka". All the charges which were levelled as per the charge exh. 3 were, therefore, held to have been proved against these accused persons and they were convicted and imposed sentences as noted hereinabove.

4. The defence counsel appearing for the appellants contended that no reliance could have been placed by the trial court on the subsequent dying declarations, because, earlier in the dying declarations which were recorded at Nadiad on 4th March, 1989, Minakshiben had in terms stated that burns were caused due to accident when the stove had burst while she was trying to make tea at her house and that no one had poured kerosene over her. She had made it clear that her relations with her husband and other members of his family were cordial. The learned counsel argued that when two sets of dying declarations which were diametrically opposite were on record, it was hazardous to convict the accused persons and they should be given benefit of reasonable doubt which arises out of the inconsistency of such two sets of dying declarations. The learned counsel submitted that as per the case-history recorded in the medical papers as well as the statement before the Investigation Officer on 4th March which is at exh. 34 and the dying declaration before the Executive Magistrate at Nadiad on 4th March, 1989 which is there on exh. 39, the prosecution story about her having been caused burn injuries is totally ruled out. It was submitted that the subsequent dying declarations recorded on 6.3.89 which are at exhs. 25 & 42 have been concocted at the instance of her brother-in-law and father who had come to Nadiad and they cannot be made as the basis for convicting all these accused persons. It was submitted that the evidence of the prosecution witnesses was not reliable and no independent persons were examined from the vicinity of

the scene of offence. It was also submitted that there were inconsistencies in the dying declarations exh. 25 & 42, the benefit of which should go to the accused persons.

5. The learned Additional Public Prosecutor on the other hand submitted that while at Nadiad, Minakshiben was under the pressure of her husband and his relatives and therefore she did not come out with truth and it is only after she was taken by her parents and brother-in-law to Ahmedabad that she disclosed the true story. It was submitted that since the disclosure of the true facts was made only after she was removed from Nadiad where she was under threats, there is no question of comparing the first set of dying declarations with the subsequent dying declarations recorded on 6th March, 1989. It was also argued that the fact that Minakshiben was being harassed was established from the oral as well as documentary evidence on record. On the basis of postcard exh. 27 which was posted on 2nd March, 1989 and received on 4th March, 1989 at Lambha, it is argued that Minakshiben had expressed in that postcard apprehensions of her impending doom and implored the addressee to take care of her children, if anything untoward should happen to her. It was submitted that on 3rd March, 1989, due to demand of dowry and harassment, she had gone to Nagindas's house at Odhav from where she was brought back to Nadiad after assurances being given by Nagindas and Chimanlal, the original accused no. 4 who was her father-in-law, and unfortunately on that very day in the afternoon again the same dowry demand was made and she was assaulted by her husband and set on fire by other accused persons. It was, therefore, submitted that the prosecution has, without any shadow of doubt, established the guilt of all these accused persons. The learned counsel pointed out that neither the husband of Minakshiben nor any of his relatives had accompanied her to Ahmedabad when she was, under medical advice, required to be shifted from the Nadiad Civil Hospital to the Ahmedabad Hospital.

6. The fact that Minakshiben had received an injury on her left hand which caused her fracture and severe burns is medically established. All the accused persons, in their statements under Sec. 313, have admitted that the incident had occurred on 4th March, 1989 in the noon around 12 o' clock. They have, however, stated that they were being falsely implicated and in fact an accident had occurred. Each one of the four accused persons took up a defence that the death was accidental. It was also their defence that a false complaint was filed against them

because Vimla, who was engaged with the brother of Minakshiben was refusing to marry him, as he was not a straight-forward person.

7. The extensive burns on various parts of her body are described in the deposition of Dr. Mariamben exh. 19 and in the certificate of the Medical Officer, Nadiad issued by her at exh. 20. The certificate shows that Minakshiben was admitted in the hospital on 4th March, 1989 and was transferred to the V.S.Hospital, Ahmedabad as per the advise of the Civil Surgeon on 5th March, 1989. In the brief history which is recorded in the certificate exh. 20, it is mentioned : " Alleged H/o accidental burns by bursting of kerosene of the stove while cooking, half an hour before, on 4.3.89 at about 2.30 p.m." When she was admitted in the Civil Hospital at Nadiad, no X-ray was taken and according to Dr.Mariamben, because of the extensive burns, it was not possible to examine her to find out whether there was any fracture. In para 3 of her deposition, Dr.Mariamben has in terms stated that the patient was fully conscious and the hair of her head had not at all burnt and were intact. This aspect will assume significance when we will discuss the defence that her death was accidental. Dr. Truptiben Dalal, medical expert who carried out the post-mortem of deceased Minakshiben on 8th March, 1989, in her deposition exh. 21 has enumerated the external injuries which were noted on the body of Minakshiben and over and above the burn injuries, according to her Minakshi had suffered a fracture on the upper portion of her left hand and all the injuries were ante-mortem. She has stated that the fracture was possible by a blow with the muddammal "dhoka". She has opined that the injuries caused to Minakshiben were collectively sufficient in the ordinary course of nature to cause her death. The burn injuries as well the fracture on the left upper part of humerus have been noted in the post-mortem report exh. 22. The injuries described against column 17 of the post-mortem report as under :

"1. A Venisection wound of about 2cm x 1cm
over right ankle with the stick.
2. Percentage distribution of burns :
(Superficial to deep in extent)
Head & Neck 9%
Upper Limb Right 9%
Upper Limb Left 9%
Abdomen Anterior 9%
Abdomen Posterior 9%
Chest Anterior 9%
Chest Posterior 9%

Lower Limb Anterior 17%
Lower Limb Posterior 17%
Genital 1%

Total 98% burns

One fracture at left upper part of humerus"

7.1. A suggestion was made to the medical experts that the death may have been caused due to bacterial infection. Even if bacterial infection may have contributed to the death, the benefit cannot go to the accused persons because as provided in explanation to Sec. 299 of the Indian Penal Code, where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment, the death might have been prevented. However, medical evidence is very clear on the cause of death and it is established beyond any doubt that Minakshiben had died because of the burn injuries which she received on 4th March, 1989.

8. Let us therefore examine whether the death of Minakshi was accidental as suggested on behalf of the accused persons or homicidal. The panchanama of scene of offence exh. 10, which has been admitted in evidence on basis of the endorsement admitting the same made on behalf of the accused persons, shows that on the ground floor of the building in which the incident had taken place, there was a shop in which tailoring work was being done. There was a machine for doing the work of interlock. The map which was also admitted and exhibited at exh. 18 shows that there is a stair case leading to the first floor from this room. On the first floor, the place of the incident is shown near the cupboard which was on the eastern wall. It is written in the panchanama that the panchas had noticed that the floor was washed and cleaned but it was still smelling of kerosene. There was a brass stove lying there on which words "Swan Stove A-1, Made in India" were engraved. There was about 300 ml. of kerosene in it. It is specifically noted that the stove was in a working condition. The size of the room was 7ft. x 18 ft. It is also noted that the ceiling was about 8 1/2 ft. high. It is specifically noted that there were no marks or stains noticed at any place in the said room as would be caused by a person set on fire touching the walls or by soot. The accused no. 4 Chimanlal had produced before the panchas remains of burnt clothes of the deceased,(i.e. brassiere, petticoat and underwear).

8.1. The inquest panchanama exh. 12 which was admitted in evidence by consent recorded on behalf of the accused persons showed that Minakshi was severely burnt all over her body and that there was a swelling on the muscle of her left hand below the shoulder and it appeared that an injury was caused to her. As noted in the post-mortem report exh. 22, she was having a fracture at this place.

8.2. In the yadi exh. 13 which was sent from the Civil Hospital, Nadiad on 4th March, 1989 to the P.S.I., Nadiad Town Police Station, it was stated that Minakshi Sureshbhai, aged about 22 years was brought to the hospital at 3 p.m. on that day and that Chelaji Sendhaji (accused no. 4) and her husband Sureshbhai (accused no. 1) and the patient had orally told the doctor that she had received accidental burns due to bursting of a stove.

8.3. In the dying declaration dated 4th March, 89 exh. 39 which was recorded by the Dy.Mamlatdar Vikramsinh Varma on 4th March, 89 at about 10 p.m., Minakshi had stated, on being enquired as to what had happened, that she was making tea around 2 o' clock in the afternoon and when she applied a pin to the stove, it suddenly flared up and first her hair started burning and thereafter her sari started burning. She had worn silk clothes. [In the original dying declaration exh. 39 which is on record, we notice that initially it was written therein that on the stove, a pan ("tapeli") was placed and while applying pin, there suddenly was a flare up. The words "tapeli was placed" have been scored off.]. It was then stated that she raised cries and on hearing her shouts, her husband had come upstairs and poured water on her from a bucket and the fire was therefore extinguished. It was stated that she was brought to the hospital by her husband and that when the incident took place she was all alone in the house. It was further stated that she and her husband were staying in a rented house and there was a shop on the ground floor while they were residing upstairs. She has stated, on being asked about her father-in-law and mother-in-law, that they were residing with her and that they had gone to Ahmedabad for a "Bhajan" programme at the house of her father-in-law's sister. On being asked about her children, she said that she had a son and a daughter. The daughter was two years old while her son was of eight months. She stated that there were cordial relations between her father-in-law and mother-in-law and herself and there were no quarrels between them. She also stated that no one had set her on fire and that she was accidentally burnt due to the

bursting of the stove. It was also stated that she did not suspect any one and that she had good relations with her husband. She also stated that her thumb was burnt but still she was placing her thumb mark on the statement.

8.4. A very interesting aspect comes out of this dying declaration. She had in terms stated that when the stove flared up because of applying pin, first her hair started burning. It has come in the deposition exh. 19 of the medical expert Dr.Mariamben that the hair of Minakshiben were not burnt and they were intact. Even in the post-mortem notes, there is absolutely no reference of her hair having been burnt. The injuries described in column 17 of the post-mortem report show that she had injuries on head, neck etc. but there is no reference to her hair being burnt and in view of the positive evidence of Dr.Mariamben, it is clear that her hair had not burnt. Therefore, the story that was given in this dying declaration exh. 39 that initially her hair had caught fire was incorrect.

8.5. One more aspect which emanates from this dying declaration dated 4.3.1989 is that, according to Minakshiben, she had received accidental burns due to the bursting of the stove. The story of bursting of the stove as noted above initially appeared in the history recorded in the medical certificate exh. 20 and the yadi exh. 13 which was sent by the Medical Officer. According to Dr.Mariamben, Chelaji (accused no. 4) and Sureshbhai (accused no. 1) had given the history of accidental burns by bursting of the stove as recorded in the medical certificate exh. 20. The story of bursting of stove was obviously incorrect, because, as noted above, the panchanama exh. 10 described the said stove to be in working order, with 300 ml. of kerosene filled in it as noted therein.

8.6. The medical evidence shows that Minakshiben had received the injury on her left arm which had caused fracture. There was a swelling on her arm which was noticed at the time of inquest. In the dying declaration exh. 39 which she gave on 4th March, 1989 as also in the statement before the police given by her on 4th March, 1989 which is at exh. 34, she made no mention of this injury on her left hand because she was required to absolve her husband and his relatives while giving her statements in their surroundings. If the burns were accidental due to the stove bursting and her hair catching fire, neither the stove nor her hair would have been intact, and surely there would be no swelling or

fracture on her left hand, if all was well on that day and the burns were only accidental. If it were an accident or even suicide, Minakshiben would not have had such fracture on her left hand. The existence of swelling on her left hand and fracture clearly negatives the theory of accident or suicide. Moreover, if it were accident or suicide, her husband and his parents and other relatives would not have abandoned her when she was taken, under medical advice, from the Civil Hospital of Nadiad to Ahmedabad. None of them accompanied her as is clear from the evidence on record. Therefore, in our opinion, the two dying declarations viz. one in the form of police statement given on 4th March, 1989 at exh. 34 and other in the form of dying declaration recorded by Executive Magistrate at Nadiad on 4th March, 1989 at exh. 39 are not worth the paper on which they are written. They cannot be used as a basis for comparision with the subsequent dying declarations which were made by Minakshi on 6.3.89 after she was out of the pressure area and free to speak out her mind before her own kith and kin. The fact that the accused persons, in their statement under Sec. 313 of the Criminal Procedure Code, have asserted that it was an accidental death shows that they have taken up a false defence which is an important circumstance against them.

9. On the happening of the actual incident, which resulted in severe burns on her body and a fracture on her left arm, there is no direct evidence except in form of the dying declarations which were recorded on 6th March, 1989. The dying declaration exh. 25 was recorded by the Executive Magistrate Lakshmanbhai Keshavbhai who, in his deposition exh. 23, has stated that he had reached the V.S.hospital for recording the dying declaration at 11 o' clock in the morning on 6th March, 1989. He had ensured that nobody remained in the room and had closed the room from inside. He made sure that Minakshiben was fully conscious. He then asked her some questions, the answers to which he took down in his own handwriting. He has stated that both her hands were burnt and it was not possible for her to give a thumb mark. He had taken the endorsements of the medical expert on the dying declaration on two pages to the effect that the patient was conscious. The endorsement in the margin which appears in the original dying declaration exh. 25 on the first page reads as under : " Pat. is conscious and fully oriented." and on page 3, it reads " Pat. is conscious and well oriented." Below the dying declaration, there is a note that before taking the dying declaration, it was ascertained that the patient was conscious. It was also noted that no

relative or police person was present during the recording of the dying declaration. On being asked as to who were the inmates of her house, she had stated that her "fuaji sasra", his son, her father-in-law, mother-in-law, two sisters-in-law, her husband and their son and daughter were residing in the house along with her. On being asked as to at that time and when the incident had occurred, she answered that it had occurred in her house at 12 o' clock noon on Saturday, the 4th of March, 1989. She stated that her "fuaji sasra" whose name is Chelaji, Champaben, Ramila, Vimla were there along with "we four" (i.e. she, her husband and their two children). She stated that she had worn a polyester sari with a polyester matching blouse at that time. On being asked about the particulars of the incident, she stated that there was a quarrel between herself and her "fuaji sasra" (i.e. Chelaji accused no. 3) and he was giving abuses to her father and had stated that he will finish him off and that he had the backing of two hundred persons. She had then gone away to her husband's uncle Naginbhai in Amraiwadi, Ahmedabad. She has then stated that on the day of the incident, her aunty had left her back at her in-laws house and on that day, the accused no. 3 Chelaji had poured kerosene on her when her mother-in-law Maniben was holding her and while her elder sister-in-law Vimla was gagging her mouth with cloth piece, the accused no. 3 Chelaji told her other sister-in-law Ramila to set her on fire and she lighted the matchstick and set her on fire, as a result of which she had received burns on her whole body. People of the surrounding area gathered and poured water on her and extinguished the fire. Her husband and the accused no. 3 had then taken her to the hospital at Nadiad. Thereafter she was brought to the V.S.hospital. On being asked as to who had set her on fire, she again stated that Chelaji (accused no. 3), Maniben, her mother-in-law (accused no. 2), Ramila, elder sister-in-law (juvenile delinquent) and Vimla, sister-in-law (juvenile delinquent), all four of them had collectively set her on fire. On being asked whether she had attempted suicide, she stated that she did not attempt to commit any suicide. She maintained that she had a dispute with these four persons. She has further stated that her sister-in-law Vimla was to be married to her brother and her mother-in-law was refusing and therefore there were quarrels since about eight to nine months. She stated that she had studied upto sixth standard. A note was made that since both her hands were burnt, it was not possible to take a thumb mark of any of her hands and therefore the thumb mark was not taken. It will be noted that in this dying declaration, she was specifically

asked as to who had set her on fire and she named the accused nos. 2 & 3 and her two sisters-in-law who were juveniles. Her earlier visit to Naginbhai at Ahmedabad is also established from the other evidence on record, as will be noted hereafter. She was brought back to her house at Nadiad on 4th March, 1989 by Miraben and in the noon, the said incident occurred. From her dying declaration exh. 25, it is clearly established that the accused nos. 2 & 3, aiding and abetting each other, gagged her, poured kerosene on her and set her on fire which ultimately resulted in her death.

10.1. Her dying declaration on 6th March, 1989, recorded in form of a statement before the police which is at exh. 42, is in greater detail. She has stated therein that in her statement before the Nadiad police, made on 4th March, 1989, she had not given the correct facts because at that time she was given threats by her husband, accused no. 3 Chelaji and her sisters-in-law in the hospital that if she spoke the truth, her children will meet the same fate. She had stated that she had also not given the correct facts before the Executive Magistrate on 4th March, 1989 because of such threats and because the accused were present around her. It will be noted that on the earlier dying declaration of 4th March, 1989 recorded by the Executive Magistrate, no endorsement of the medical expert was taken about her condition. In the dying declaration exh. 42, she stated that on the day of the incident, in the afternoon at about 3 o' clock, her husband had told her that the earrings which she had brought from her parents were fake and that she was not bringing a gold chain and a gold ring and had picked up a quarrel with her. At that time, the accused Chelaji, her mother-in-law and two sisters-in-law were all doing tailoring work on the ground floor. She had only stated that her parents were poor and from where should they bring ornaments. On this, her husband got excited and he took out his belt and started beating her. Thereafter, he brought a "dhoka", meant for washing clothes, and had beaten her with that "dhoka". He gave a blow with "dhoka" on her left hand above the elbow which had resulted in a fracture. Thereafter, her mother-in-law and the accused no. 3-Chelaji took her in the kitchen, which is in the room on the first floor. The accused no. 3 had caught her by her hair and gagged her mouth with cloth. Her mother-in-law had poured kerosene on her and her sister-in-law had called for a match box and the other sister-in-law Ramila brought the match box and lighted the matchstick and set her on fire. After setting her on fire, all of them went down stairs. It was stated that she, with great difficulty, took out

the cloth with which her mouth was gagged and she started shouting. When she started shouting, her husband and the accused no. 3 came upstairs along with her mother-in-law and she was brought down. Many people from the locality had gathered. She was taken in an autorickshaw to the Civil Hospital, Nadiad by her husband and the accused no. 3-Chelaji. When she had raised shouts, her husband and the accused no. 3 had poured water on her. She was threatened at the hospital by her husband, the accused no. 3 and her sisters-in-law that if she spoke the truth about the matter, both her children will meet the same fate. It was further stated that when her parents and brother-in-law came, she told that she would tell them the true facts after she was taken to Ahmedabad. While she was taken to Ahmedabad from Nadiad, on her way and thereafter when she was admitted in the V.S.Hospital at Ahmedabad, she had narrated the above version to all her people. She had also stated that her burnt sari, blouse, petticoat etc. were kept by her husband and the accused no. 3 somewhere in the house itself. She has stated that she was being harassed mentally because her father-in-law was refusing to get his daughter married to her brother (with whom she was engaged). Moreover, all the members of the family were harassing her because she was not bringing a gold chain and a gold ring from her parents. She in terms stated that her husband, mother-in-law, father-in-law, the accused no.3-Chelaji and both sisters-in-law had quarrelled with her on 3rd March, 1989 and therefore she went away to Odhav at the house of her husband's uncle, where a leader of their community and her father were called. Her brother-in-law (sister's husband) and father-in-law had also come and she had narrated the harassment which was meted out to her. When assurance was given by her father-in-law and his brother, on the next day (i.e. 4th March, 1989), her husband's uncle's wife Miraben brought her back to Nadiad. She also stated that she had written a post card dated 2nd March, 1989 to her brother-in-law Dilipkumar at Lambha stating that all these persons were causing harassment to her. She stated that she has not received burns due to any accident but the aforesaid accused persons had set her on fire. She finally stated that she was pregnant running her fourth month.

11. The particulars which she narrated in her statement exh. 42 which is a dying declaration were also mentioned by her before her brother-in-law Dilipkumar and her father Shivabhai. Dilipkumar, in his deposition exh. 29, has stated that Minakshiben was complaining about a month and a half prior to the incident when she had come to his house that her in-laws were demanding gold chain,

gold ring and gold earrings and were saying that unless she brought them, she should not come back. She had said that she was being harassed by her husband, her mother-in-law, the accused no.3-Chelaji and her father-in-law. He also stated that Minakshiben had come to Nagindas's house, which fact corroborates the statement made in her dying declaration exh. 42, that she had gone to Odhav at Nagindas's house on 3rd March, 1989 where the leader of their community Devaji and her father-in-law had gathered. This witness has stated that he had also gone to Odhav. At that time, Minakshi had stated that her father-in-law, her mother-in-law, her husband, accused no. 3 (fuaji sasra) were harassing her for gold ornaments. Thereupon, her father-in-law had given an assurance and the dispute was settled, and she was taken by Nagindas's wife Miraben to her in-laws. This witness came to know about Minakshiben having received burns on 5th March, 1989 in the morning 9 o' clock when he was told by Miraben. He informed his father-in-law Shivabhai and all of them went to Nadiad and on seeking Minakshi, Shivabhai asked her as to what had happened and she said that she would tell them later on when she will be taken to Ahmedabad. He then stated that when they were proceeding to Ahmedabad in an ambulance, Minakshi was asked as to what had happened and she stated that after the wife of her husband's uncle (Miraben) came to leave her at her in-laws place, her husband had beaten over the ornaments issue with his belt and a "dhoka" meant for washing clothes and had broken her left hand. She also stated that her "fuaji sasra" (accused no. 3), mother-in-law (accused no. 2) and husband (accused no. 3) took her in the kitchen room where she was beaten by her husband, and, her "fuaji sasra" (accused no. 3) gagged her mouth and dragged by her hair and her mother-in-law had poured kerosene on her and Ramila had lighted the matchstick and thereafter all of them had gone downstairs. After removing the cloth with which her mouth was gagged, she started shouting and thereupon her husband and accused no. 3 came upstairs. Many people had gathered and she was brought down and was taken to the Civil Hospital.

11.1. This witness has spoken about the postcard exh. 27 and identified the handwriting therein. In that postcard which was posted on 2nd March, 1989 and received at Lambha on 4th March, 1989 as per the postal seals appearing thereon, Minakshi had written to her sister (Manju) and brother-in-law , that all of them had put her in a well and that her end was nearing. She had written that if anything happened to her, they should treat her two children as given to them by God and keep them as

their own and look after them. She had also stated that the accused no. 4-Chimanlal was not ready to give his daughter in marriage and was speaking whatever came to his head and taunting her. It was also written that all of them were harassing her in their house and that it would be better if she dies pouring kerosene on her. The genuineness of this postcard is clearly established from the evidence on record. The postcard shows that two days prior to the date of the incident, she was already apprehending trouble and was worried about her children and in her exasperation, she had even stated that it would be better to die. However, that expression cannot be used to infer that she had committed suicide. We have already ruled out the theory of accident and suicide, more particularly, in view of the fracture that was caused on her left hand by a blow given by her husband with a "dhoka" at the time of the incident that took place on 4th March, 1989.

12. Shivabhai, father of Minakshiben in his deposition exh. 26 has fully supported the prosecution version. He has stated that at the time of the incident, her daughter Minakshi was pregnant. She used to complain that her husband Sureshbhai, accused no. 3-Chelaji, her mother-in-law, and her sisters-in-law were asking for a gold chain and a gold ring and had told her not to enter the house unless she brought them. At that time, she had stayed for a week with her father. When her father went to leave her, he asked the accused no. 4 Chimanlal about Vimu's (Vimla) marriage with his son Baldev and at that time Chimanlal had said that he could not get his daughter married with him. On Friday (i.e. 3rd March, 1989), Minakshi, due to harassment by her in-laws, came to Nagindas's house at Odhav. Nagindas had called him and therefore he went there. The accused no. 4 Chimanlal was there and the leader of their community Devaji was also present. Minakshi had, at that time, stated that because sufficient dowry was not given, the accused no. 3, her mother-in-law, her sisters-in-law and her husband were harassing her. This witness, therefore, told them that he would take her away to his house. Thereupon, Chimanlal and Nagindas gave assurance that it was their responsibility. Minakshi was, thereafter, taken by Miraben (wife of Nagindas) to Nadiad. Thereafter, this witness came to know about Minakshi having received burns and he went to Nadiad at about 11.30 a.m. on 5th March, 1989 at the Civil Hospital, Nadiad. He saw her lying with severe burns. When he asked as to how this happened, she told him that she would tell later on when she was taken to other hospital at Ahmedabad. This witness asked the accused no.

4-Chimanlal, the accused no.2 Maniben and also Minakshi's husband about her burns but they did not give any answer. Thereafter, she was taken to the V.S.Hospital, Ahmedabad. where she narrated the story that on 4th March, 1989, in the afternoon at about 2.00 to 3.00 hrs., her husband had beaten her with his belt and with a "dhoka" meant for washing clothes and by "dhoka" blow on her left hand, caused her a fracture. She had also told them that the accused nos. 2 & 3 dragged her in the other room and the accused no. 3 poured kerosene on her and Ramila set her on fire by lighting a matchstick. This witness is fully corroborated by the complaint which he had given. He has also spoken about the letter exh. 27 in which Minakshi had complained about the harassment and the apprehension for her life which unfortunately came to be true. In his cross-examination, he has stated that when they were going from Nadiad to Ahmedabad, he was sitting in the front seat of the Ambulance. This explains why he had asked Minakshi about the incident after she was admitted in the V.S.Hospital, Ahmedabad. The prosecution witness Chandrakant Dhulabhai exh. 28 supports the prosecution version as regards the demand of gold ornaments by the in-laws of Minakshiben, a month and a half prior to the incident, when she had spoken about it at the place of Dilipbhai who was the husband of her sister Minakshi, at which time this witness was present.

13. We are therefore, fully satisfied from the dying declarations of Minakshi which were recorded on 6th March, 1989 and the medical evidence that Minakshiben was initially beaten by her husband with a belt and "dhoka" meant for washing clothes by which he caused a fracture on her left arm and all this was being done because she had not brought gold ornaments as were demanded by her father-in-law, mother-in-law, her husband as well as the accused no. 3-Chelaji and her sisters-in-law. At that time, the accused nos. 2 & 3 dragged her in the kitchen room which is on the first floor of the building and after gagging her mouth with a cloth piece and pouring kerosene on her, they set her on fire, by asking Ramila to bring a match box and Ramila complied by striking a matchstick and setting her on fire. Thinking that since she was gagged and already burning, they went down, but as luck would have it, she removed the cloth with which she was gagged and started shouting, which must have caused embarrassment to the accused as it was broad day light and people from the locality had gathered there hearing the shouts. This is why they could not keep on watching and when others from the neighbourhood heard the shouts and started gathering there, they had necessarily to make the show of pouring water and extinguishing the

fire and taking her to the hospital so that they may not get exposed as the assailants. The two dying declarations which she gave at Nadiad on 4th March, 1989, as noted above are absolutely incorrect and obviously given under the threats of her husband (accused no. 1) and the accused no. 3, who had taken her to the hospital. We have demonstrated how the accident theory cannot stand to reason even for a moment, because, as per the dying declaration her hair had caught fire while as per the medical evidence her hair was intact and as per the earlier history given in the Nadiad hospital and the dying declaration as well yadi sent by the doctor, an accident had occurred due to bursting of the stove, while that stove was in fact found to be in working order and intact with 300 ml. of kerosene in it.

14. There is, in our view, absolutely no scope for any doubt in this matter about the guilt of these appellants and we find ourselves in full agreement with the trial court in all its reasoning and findings against these accused persons, in respect of the offence under Sec. 302 read with Sec. 114 of the Indian Penal Code, so far as the accused nos. 2 & 3 are concerned and in respect of the offence under Sec. 304-B as well as 498-A of the Indian Penal Code so far all as the appellants-accused are concerned for which adequate sentences have been imposed warranting no interference by this court.

The appeal is, therefore, dismissed.

(R.K.ABICHANDANI,J)

(SHARAD D DAVE, J)

srilatha